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Mr. Christopher John Rourk
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In re Application of
Lambert Wayne Leroux et al.
Application No. 09/592,776
Filed: June 13, 2000
For: SYSTEM AND METHOD FOR PAYMENT
DATA PROCESSING

: DECISION ON THE PETITION
: REGARDING REQUEST TO
: RECLASSIFY AND TRANSFER
: APPLICATION

Applicant's petition filed under 37 CFR 1.181, filed March 12, 2010, requests the TC 3600 Director to mandate that the examiner of the subject application respond to the Appeal Brief, filed concurrently with the instant petition, with an Examiner's Answer, and prevent the examiner from reopening prosecution.

The petition is **DENIED**.

Applicant's petition recites his experience in this application with an earlier filed Appeal Brief, filed on March 2, 2009 which was filed in response to a Final Office action mailed October 2, 2008. In response to this earlier filed Brief, the examiner reopened prosecution with a new non-final Office action on September 1, 2009. Applicant goes on to say that the above-noted Office action of September 1, 2009 "cited virtually identical rejections of all pending claims" to the above-noted Final Office action of October 2, 2008.

Applicant asks the Director to require the examiner of the subject application to respond to the Appeal Brief, filed concurrently with the instant petition, with an Examiner's Answer, and to prevent the examiner from reopening prosecution.

Initially, as applicant correctly points out, the examiner is allowed to reopen prosecution in response to an Appeal Brief, with the approval of the Supervisory Patent Examiner (SPE), as per the requirements of MPEP 1207.04. The Office action of September 1, 2009 properly contains the approval of the SPE. Furthermore, it is not clear why the applicant believes that the September 1, 2009 Office action "contains virtually identical rejections of all the pending claims"? In the Office action of October 2, 2008, the lone rejection over art is a rejection under 35 USC 103 over Takayama. However, in the Office action of September 1, 2009 the lone rejection over art is a rejection under 35 USC 103 over Cockrill in view of Flitcroft et al. Clearly, when better art came to light, the examiner was not only able, but obligated, to reopen prosecution to raise this new ground of rejection.

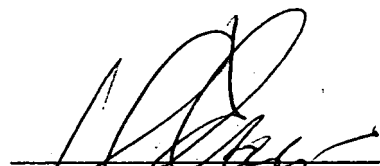
While it is regrettable that an applicant would have the prosecution of his application extended longer than they would desire, getting the best art in the case is what is paramount.

As to applicant's request that the Director prevent the examiner from reopening prosecution in this application in the future, that request will not be granted. As it stands now, the applicant seems to be petitioning to avoid reopening on the grounds that any reopening is (or would be) unjustified as illegitimate, even before it is known on what grounds the reopening would occur under. Applicant argues that "as applicants have already appealed once and prosecution has already been reopened once, there appears to be no legitimate basis for the examiner to reopen prosecution again...". A previous reopening of prosecution has no bearing on the propriety of any subsequent reopening. And how is it that the applicant can conclude that any reason for reopening would be illegitimate, without even knowing what the grounds are under which any such speculative reopening would take place? Clearly no one can correctly draw such a conclusion.

If a reopening takes place which the applicant feels is arbitrary and/or capricious, applicant may petition for supervisory review to vacate such an action, but to argue any reopening is improper before it is even made is not persuasive.

The petition dated March 12, 2010 for preventing the examiner from making a future reopening of prosecution in this application is **DENIED**.

Any questions or comments with respect to this decision should be forwarded to Quality Assurance Specialist Steven N. Meyers at (571) 272-6611.



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